

**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD**

DIVISION OF WATER RIGHTS

ORDER

Application 14735 Permit 9151 License 5368

**ORDER APPROVING THE CHANGE IN THE PLACE OF USE,
DENYING CHANGE IN THE POINT OF DIVERSION,
AND AMENDING THE LICENSE**

WHEREAS:

1. License 5368 was issued to Elmer F. Axell on October 22, 1958. The License was subsequently assigned to Kendell-Jackson Winery on May 21, 1993.
2. License 5368 currently provides the follows information:

| | |
|----------------------------|--|
| SOURCE: | Unnamed Stream tributary to Franz Creek thence Maacama Creek thence Russian River |
| PURPOSE OF USE: | Irrigation and frost protection |
| STORAGE AMOUNT: | 156 acre-feet collect from November 1 to May 1 of the succeeding year |
| MAXIMUM ANNUAL WITHDRAWAL: | 138 acre-foot |
| POINT OF DIVERSION: | South 400 feet and west 1,200 feet from NE corner of projected Section 20, T9N, R8W, MDB&M, being within the NE¼ of NE¼ of said projected Section 20 |
| PLACE OF USE: | 71 acres within the following 40-acre subdivision of the public land survey: |

6 acres within the NE¼ of NW¼ of projected Section 20, T9N, R8W, MDB&M;
3 acres within the SE¼ of NW¼ of projected Section 20, T9N, R8W, MDB&M;
7 acres within the NW¼ of NE¼ of projected Section 20, T9N, R8W, MDB&M;
31 acres within the SW¼ of NE¼ of projected Section 20, T9N, R8W, MDB&M;
15 acres within the SE¼ of NE¼ of projected Section 20, T9N, R8W, MDB&M; &
9 acres within the NE¼ of NE¼ of projected Section 20, T9N, R8W, MDB&M
as shown on a map on file with the State Water Resources Control Board (SWRCB).

3. A petition for change to add a new point of diversion on Maacama Creek and increase the place of use was filed with the SWRCB on August 16, 1993. The SWRCB has determined that good cause for increasing the place of use to 126 acres was shown.

4. The SWRCB has determined that the change in the point of diversion constitutes the initiation of a new water right and may operate to the injury of other lawful users of water, and should be addressed by the filing of a new application.
5. The SWRCB has determined that change in the place of use does not constitute the initiation of a new right nor operate to the injury of any lawful user of water.
6. The 126-acre place of use under this license is common to the petitioner's place of use under water right License 5674 (Application 13533). The SWRCB has determined that the license should be conditioned to eliminate redundancy by the inclusion of a maximum annual limit of 208 acre-feet.
7. Fish, wildlife, and plants have been or may be listed under Federal Endangered Species Act and/or California Endangered Species Act. A term should be placed in the license making the licensee aware of possible obligations resulting from these acts.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The request to add an additional new point of diversion is denied
2. The description for the place of use is amended to read as follows:

6 acres within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M;
7 acres within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M;
20 acres within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M;
35 acres within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M;
15 acres within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M;
20 acres within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M;
15 acres within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M;
1 acre within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M;
5 acres within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 17, T9N, R8W, MDB&M; &
2 acres within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 16, T9N, R8W, MDB&M
126 acres total

as shown on the map date October 10, 1993, on file with the SWRCB.

3. Addition of a maximum annual amount term to read as follows:

The maximum annual amount of water diverted under License 5674 (Application 13533) and this license shall not exceed 208 acre-feet per year.

4. Addition of a water quality term to read as follows:

The quantity of water diverted under this license is subject to modification by the State Water Resources Control Board if, after notice to the licensee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

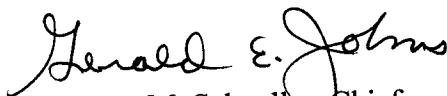
(0000013)

5. Addition of an endangered species term to read as follow:

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain an incidental take permit prior to construction or operation. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit

(0000014)

Dated: OCT 27 1999


for Harry M. Schueller, Chief
Division of Water Rights

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 14735

PERMIT 9151

LICENSE 5368

ORDER ALLOWING CORRECTION IN THE POINT OF DIVERSION, CHANGE
IN THE PLACE OF USE AND PURPOSE OF USE

WHEREAS:

1. License 5368 was issued to Elmer F. Axell and was filed with the County Recorder of Sonoma County on October 22, 1958.
2. License 5368 was subsequently assigned to Stephen A. Zellerbach.
3. A petition for correction in the description of the point of diversion, change in the place of use and purpose of use have been filed with the State Water Resources Control Board and said Board has determined that good cause for such changes has been shown.
4. The Board has determined that the petitioned changes do not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The purposes of use under this license shall be as follows:

Irrigation and Frost Protection

2. The point of diversion under this license shall be as follows:

South four hundred (400) feet and West one thousand two hundred (1,200) feet from NE corner of projected Section 20, T9N, R8W, MDB&M, being within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said projected Section 20.

3. The place of use under this license shall be as follows:

6 acres within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M
3 acres within SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M
7 acres within NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M
31 acres within SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M
15 acres within SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M
9 acres within NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M
71 acres total

4. The paragraph pertaining to the continuing authority of the Board is replaced with the following.

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water

Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

Dated: APRIL 28 1987

Raymond Walsh

Raymond Walsh, Chief
Division of Water Rights

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STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

License for Diversion and Use of Water

APPLICATION 14735

PERMIT 9151

LICENSE 5368

THIS IS TO CERTIFY, That

Elmer F. Axell
14735 Chalk Hill Road
Healdsburg, California

Notice of Change (Over)

has made proof as of October 12, 1956
(the date of inspection) to the satisfaction of the State Water Rights Board of a right to the use of the water of
an unnamed stream in Sonoma County
tributary to Franz Creek

for the purpose of irrigation use
under Permit 9151 of the State Water Rights Board and that said right to the use of said water has been
perfected in accordance with the laws of California, the Rules and Regulations of the State Water Rights Board and the
terms of the said permit; that the priority of the right herein confirmed dates from March 31, 1952
and that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited
to the amount actually beneficially used for said purposes and shall not exceed one hundred fifty-six
(156) acre-feet per annum to be collected from about November 1 of each year to
about May 1 of the succeeding year.

The maximum withdrawal in any one year has been 138 acre-feet.

The point of diversion of such water is located:
South six hundred seventy (670) feet and west one thousand four hundred five
(1405) feet from NE corner of projected Section 20, T9N, R8W, MDB&M, being within
NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said projected Section 20.

A description of the lands or the place where such water is put to beneficial use is as follows:

19 acres within SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M
13 acres within NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M
4 acres within NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M
9 acres within SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20, T9N, R8W, MDB&M
45 acres total

All rights and privileges under this license including method of diversion, method of use and quantity of water
diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the
interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of
diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time
to time by the State Water Rights Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein
specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

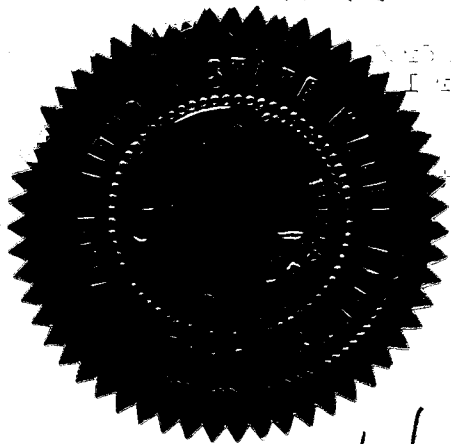
Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated OCT 22 '58

L. K. Hill
L. K. Hill
Executive Officer



12/3/68

RECEIVED NOTICE OF ASSIGNMENT TO

Est. of Elmer L. Axell's

4-9-70

RECEIVED NOTICE OF ASSIGNMENT TO

Stephen A. Axell

5-21-93 *asgts Kendall Jackson Winery*

LICENSE 5368

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

LICENSE
TO APPROPRIATE WATER

ISSUED TO *Elmer F. Axell*

OCT 22 '58

DATED

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